

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

ELIHU SIGAL,

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Petitioner,

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No. 06-600

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Special Master Christian J. Moran

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v.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Filed: June 19, 2007

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Respondent.

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UNPUBLISHED DECISION*

Respondent argues that the Court lacks jurisdiction to entertain this action because it was not brought by a proper petitioner. An objection to this motion was not presented. Consequently, the case is DISMISSED.

In October 2002, Mr. Elihu Sigal received a flu vaccination. Pet. at ¶ 2; exhibit 1 at 75, 94, 100. Mr. Sigal developed severe pain in his lower extremities. Pet. at ¶ 3; exhibit 1 at 75. He was diagnosed with Guillan-Barre Syndrome on or about December 5, 2002. Exhibit 1 at 105.

* Pursuant to 42 U.S.C. § 300aa-12(d)(3)(A), this document constitutes a final “decision.” Unless a motion for review is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. When such a decision or designated substantive order is filed, petitioner has 14 days to identify and to move to delete such information before the document’s disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

At some unspecified time, Mr. Sigal consulted Mr. Russell Nordstrom, an attorney.¹ Apparently, Mr. Sigal retained Mr. Nordstrom to represent him in an action seeking compensation pursuant to the National Childhood Vaccine Injury Act, 42 U.S.C. § 300aa-10 et seq. This consultation must have happened sometime after Mr. Sigal was vaccinated in 2002. The consultation also must have happened sometime before July 21, 2005.

Mr. Sigal must have retained Mr. Nordstrom before July 21, 2005, because, on that day, Mr. Sigal died in a car accident. The immediate cause of death was “thermocutaneous burns,” and the injury occurred in a “car fire.” Exhibit A to Resp’t Mot. to Dismiss (Elihu Sigal’s death certificate).

Mr. Nordstrom filed a petition, naming Elihu Sigal as petitioner, on August 23, 2006. This petition seeks compensation for Mr. Sigal’s injuries. While attempting to gather additional medical records, Mr. Nordstrom discovered that Mr. Sigal died. Order, dated February 16, 2007. Three status conferences followed. In these, Mr. Nordstrom stated that he was considering amending the petition to either allege that the flu vaccination caused Mr. Sigal’s death or to change the caption on the petition to name Mr. Sigal’s widow, as the petitioner instead. However, Mr. Nordstrom did not filed any motion to amend the petition.

On June 8, 2007, respondent filed a motion to dismiss for lack of jurisdiction. Respondent argues that because Mr. Sigal died prior to the filing of the petition, he cannot be a proper petitioner. On June 15, 2007, another status conference was held. Mr. Nordstrom stated that he did not oppose the granting of the motion to dismiss.

¹ Although most opinions follow a convention in which acts performed by an attorney are attributed to the client, the circumstances in this case require that the attorney and client be differentiated.

Jurisdiction must be addressed first. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998) (“The requirement that jurisdiction be established as a threshold matter ... is ‘inflexible and without exception.’”) (quoting Mansfield, C. & L.M. Ry. Co. v. Swan, 111 U.S. 379, 382 (1884)). This principle restricts how the Office of Special Master adjudicates petitions seeking compensation through the Vaccine Program. O’Connell v. Sec’y of Health & Human Servs., 63 Fed. Cl. 49, 57 n. 7 (2004). Consequently, it is necessary to resolve the jurisdictional issue. Id.; see also Barnett v. Brown, 83 F.3d 1380, 1383 (Fed. Cir. 1996) (stating “any statutory tribunal must ensure that it has jurisdiction over each case before adjudicating the merits”) (emphasis in original). An independent determination of jurisdiction is required. Hines v. Sec’y of Health & Human Servs., 940 F.2d 1518, 1522 (Fed. Cir. 1991).

The Vaccine Act specifies three classes of people who may file a petition. In pertinent part, the statute states:

any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may . . . file a petition for compensation under the Program.

42 U.S.C. § 300aa-11(b)(1)(A).

Based on the pending petition, Mr. Sigal does not fall within any of the three specified groups. First, although the petition alleges that Mr. Sigal sustained a “vaccine-related injury,” Mr. Sigal could not file a petition for compensation on August 23, 2006. Mr. Sigal could not do so, because Mr. Sigal was dead.

Mr. Sigal's death raises the question whether his legal representative could file an action for him. The second and third clauses of the subparagraph address this question. The statute allows the legal representative of a minor or disabled person to file a petition when the minor or disabled person sustained a vaccine-related injury. As of August 23, 2006, the date of his petition, Mr. Sigal was neither a minor nor disabled. Thus, the second clause does not assist him.

The third clause also does not include Mr. Sigal within its provisions. While this clause authorizes the legal representative of a person who died to file a petition, the clause is limited to "any person who died as a result of the administration of a vaccine." In the petition, Mr. Nordstrom has not alleged that the car crash, which was the immediate cause of Mr. Sigal's death, was the result of Mr. Sigal receiving the flu vaccine.

Consequently, Mr. Sigal, the listed petitioner, does not fall within the group of people who may file a petition for compensation pursuant to the National Childhood Vaccine Injury Act. Mr. Sigal, who died even before this petition was filed, is analogous to a petitioner who lacks standing. See Flannery v. Sec'y of Health & Human Servs., Fed. Cl. 99-963V, 2003 WL 1699396 (March 14, 2003) (dismissing case for lack of jurisdiction because, while case was pending, petitioner died from causes not connected to the vaccine and no one possessed standing to assert a claim for petitioner's injuries).

Standing implicates a court's jurisdiction. Fuji Photo Film Co., Ltd. v. International Trade Com'n, 474 F.3d 1281, 1289 (Fed. Cir. 2007). Although the United States Court of Federal Claims is not an Article III tribunal, a petitioner must still have standing. Otherwise, the United States Court of Appeals for the Federal Circuit, which is an Article III tribunal, may dismiss the case for lack of standing, should the case reach that court. See Landmark Land Co.,

Inc. v. United States, 256 F.3d 1365, 1379-81 (Fed. Cir. 2001) (dismissing claim of an intervening plaintiff, who obtained a judgment in the trial court, despite defendant's delay in raising the question of standing until appeal).

The Federal Circuit has emphasized that standing turns on the petitioner's status:

Fundamentally, the question of standing involves the determination of whether a particular litigant is entitled to invoke the jurisdiction of a federal court to decide the merits of a dispute or of particular issues. . . . The focus is on the qualifications and status of the party seeking to bring his complaint before a federal court and not on the issues he wishes to have resolved.

McKinney v. U.S. Dept. of Treasury, 799 F.2d 1544, 1549 (Fed. Cir. 1986) (citations omitted).

The status of Mr. Sigal — a person who died from causes not related to a vaccine — prevents Mr. Sigal from being a petitioner.

For these reasons, the Clerk is therefore ORDERED to dismiss the petition for lack of jurisdiction.²

IT IS SO ORDERED.

Christian J. Moran
Special Master

² For 30 days, the parties may seek review of this decision. Vaccine Rule 23. The parties may also renounce their right to seek review. Vaccine Rule 11(a). (A sample notice is provided as attachment 3 to the Guidelines for Practice Under the National Vaccine Injury Compensation Program.) After it is clear that neither party will seek review of the special master's decision – either because both parties have renounced their right to seek review or because more than 30 days have elapsed – the Clerk's Office will issue a “judgment.” Vaccine Rule 11(a).